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July 1, 2004

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

Re: **Notice of Ex Parte Presentation** — National Exchange Carrier Association,  
Inc. Petition for Rulemaking to Amend Section 69.104 of the FCC Rules.  
RM No. 10603

Dear Ms. Dortch:

On June 30, 2004 Richard A. Askoff and Judith Harris, representing NECA, and Karen Brinkmann, representing CenturyTel, Inc. met with Jessica Rosenworcel, Matthew Brill and Scott Bergmann of the offices of Commissioners Copps, Abernathy and Adelstein, respectively. The purpose of these meetings was to discuss the status of the Petition for Waiver filed in the above-captioned proceeding by NECA and several local exchange carrier trade associations. NECA and CenturyTel, Inc. discussed points consistent with prior filings in this proceeding.

Ms. Brinkmann provided the attached materials regarding CenturyTel, Inc.'s DTS service offerings. In response to prior requests from Commission staff Ms. Brinkmann also provided information demonstrating that the Commission has authority to waive its rules during the pendency of rulemaking proceedings.

In accordance with the Commission's rules, a copy of this Notice has been filed electronically in the above referenced docket. Should you have any questions please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Askoff", is written over a light gray circular background.

Richard A. Askoff

cc: Scott Bergman  
Matthew Brill  
Jessica Rosenworcel  
Best Copy & Printing Services

## COMPARISON OF T-1-BASED DTS AND PRI-ISDN SERVICES

DTS	PRI - ISDN
24 channels per T1 arrangement	23-24 channels per PRI
24 SLCs per T-1 arrangement	5 SLCs per PRI
No Port charges	1 Port charge
1 T-1 interface to manage; 2 copper pairs - more efficient than 24 copper loops	1 PRI interface to manage; 2 copper pairs - more efficient than 24 copper loops (different software and/or hardware at switch)
1 T1 card needed for 24 channels (more density possible using CPE)	1 PRI card needed for 23-24 channels (more density possible using CPE)
Retail rate would be <i>lower</i> if only 5 SLCs required	Retail rate would be higher <i>but for</i> the lesser number of SLCs charged today
<i>Far more widely available in rural markets</i> -- Customers are PBX-based multi-line end-users, ISPs, others	<i>More robust feature capability</i> -- customers are multi-line end-users, ISPs, others
With E911, only primary location of building/PBX is transmitted (Example: 106 Main Street)	With E911, station IDs in PBX can be transmitted (Example: 106 Main Street – 3 <sup>rd</sup> Grade Room) (Feature preferred by many school systems)
No Caller I.D. available today	Called I.D. (name and number) available

## COMPARISON OF DTS AND SINGLE-TRUNK SERVICES

DTS	Single Trunk Services
24 channels	1 Channel per trunk
24 SLCs per T-1	1 SLC per trunk
No Port charge	No Port charge
1 T-1 interface to manage; 2 copper pairs – more efficient than 24 copper loops	24 copper loops used to provide 24 channels
1 T1 card needed for 24 channels (more density possible using CPE)	More cards needed on CPE for same number of channels (each channel requires one port)
Rates include T1 in addition to the channels (may be offered by channel - with a minimum - or as 24 channels) – Total retail rate would be <i>lower</i> if only 5 SLCs required	Rates are based on the number of trunks/channels
<i>Widely available in rural markets</i> – Customers are PBX-based multi-line end-users, ISPs, others	<i>Widely available in rural markets</i> – Customers are Key & PBX-based multi-line end-users
With E911; only primary location of building/PBX is transmitted (Example: 106 Main Street)	With E911; only primary location of building/PBX is transmitted (Example: 106 Main Street)
No Caller I.D. available today	Called I.D. (name and number) available

Comparison of Retail Rates for DTS vs. PRI-ISDN Services

	Tariffed Rates	SLCs@ \$9.20 ea.	Total
CTL-Colorado	DTS - \$ 792.00	(24) \$ 220.80	\$ 1,1012.80
		(5) 46.00	838.00
	PRI - 995.00	(5) 46.00	1, 041.00
CTL-Tennessee	DTS - \$ 927.20	(24) \$ 220.80	\$ 1,148.00
		(5) 46.00	973.20
	PRI - 1,100.00	(5) 46.00	1,146.00
CTL-Washington	DTS - \$ 785.00	(24) \$ 220.80	\$ 1,005.80
		(5) 46.00	831.00
	PRI - \$ 890.00	(5) 46.00	936.00

## **Commission Precedent for Granting a Waiver Pending a Relevant Rulemaking**

Commission precedent supports the grant of the Associations' *Joint Petition for Expedited Waiver*<sup>1</sup> pending Commission consideration of the *Petition for Rulemaking* by the National Exchange Carrier Association, Inc. ("NECA").<sup>2</sup> The Commission's rules generally may be waived for good cause shown.<sup>3</sup> Agency rules are presumed valid,<sup>4</sup> but the Commission may exercise its discretion to waive a rule where strict compliance would be inconsistent with the public interest.<sup>5</sup> The Commission may also take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>6</sup> Waiver is appropriate if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.<sup>7</sup> Grant of the waiver requested by Associations is warranted, and will serve the public interest, for the reasons set forth in the Joint Petition.

The grant of a waiver pending decision on the NECA Petition for Rulemaking would be consistent with the Commission's past practice in similar circumstances. The following are recent examples of FCC waivers where a rulemaking on the relevant issue also was pending:

- ◆ *Verizon Petition for Interim Waiver of Sections 61.42(g), 61.38 and 61.49 of the Commission's Rules*, Order, 17 FCC Rcd 11010 (Wir. Comp. Bur., Pric. Pol. Div. 2002) (granting a limited waiver of the price cap rules pending further rulemakings concerning the regulatory status of services transferred from Verizon's separate advanced services affiliate); waiver renewed in 2003, 18 FCC Rcd 6498, and 2004, 19 FCC Rcd 7095, pending further rulemakings.
- ◆ *Valor Telecommunications, LLC Petition for Waiver of Section 61.41 Of the Commission's Rules*, Memorandum Opinion and Order, 17 FCC Rcd 25544 (Wir. Comp. Bur. 2002) (granting a waiver of the Commission's "all-or-nothing" rule until the Commission completes review of that rule).

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<sup>1</sup> National Exchange Carrier Association, Inc. Petition to Amend Section 69.104 of the Commission's Rules, RM 10603, *Joint Petition for Expedited Waiver* (Aug. 19, 2003) (*Waiver Petition*) filed by Eastern Rural Telecom Association (ERTA), Independent Telephone & Telecommunications Alliance (ITTA), John Staurulakis Incorporated (JSI), Matanuska Telephone Association, Inc., National Exchange Carrier Association, Inc. (NECA), National Telecommunications Cooperative Association (NTCA), Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO), TDS Telecom (TDS), the United States Telecom Association (USTA), and the Western Alliance (collectively, "the Associations").

<sup>2</sup> Petition for Rulemaking by the National Exchange Carrier Association, Inc. (filed Sept. 26, 2002) ("NECA Petition").

<sup>3</sup> 47 C.F.R. § 1.3.

<sup>4</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

<sup>5</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>6</sup> *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular Telephone*, 897 F.2d at 1166.

<sup>7</sup> *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular Telephone*, 897 F.2d at 1166.

**Commission Precedent for Granting a Waiver Pending a Relevant Rulemaking, continued**

- ◆ *ALLTEL Corporation, Petition for Waiver of Section 61.41; Petition to Extend Interim Waiver of Section 61.41 of the Commission's Rules; CenturyTel, Inc. and CenturyTel of Alabama, LLC, Petition for Waiver of Sections 61.41(b) and (c) of the Commission's Rules; CenturyTel, Inc. and CenturyTel of Missouri, LLC, Petition for Waiver of Sections 61.41(b) and (c) of the Commission's Rules; Puerto Rico Telephone Company Petition for Waiver of Section 61.41 of the Commission's Rules or, in the Alternative, Request for Waiver of Section 54.303(a) of the Commission's Rules*, Memorandum Opinion and Order, 17 FCC Rcd 27694 (Wir. Comp. Bur. 2002) (granting three new waivers and extending two previous waivers to allow acquiring carriers to continue to operate their existing exchanges under rate-of-return regulation until the Commission completes its review of the "all-or-nothing" rule).
- ◆ *New York Telephone Company and New England Telephone and Telegraph Company, Nonrecurring Charges for Reconfiguration of Circuits; Applications for Review and Petition for Reconsideration; Petition for Indefinite Extension of Waiver*, Memorandum Opinion and Order, 13 FCC Rcd 8324 (Commission 1998) (granting an indefinite extension of waiver of Commission's policy governing assessment of nonrecurring reconfiguration charges subject to any applicable rules on pricing flexibility adopted in the Access Reform rulemaking proceeding).
- ◆ *United States Telephone Association Petition for Waiver of Part 32 of the Commission's Rules*, Order, 13 FCC Rcd 214 (Com. Car. Bur., Acct. and Aud. Div. 1997) (granting a waiver of certain payphone accounting requirements pending final action in related rulemaking).
- ◆ *Waiver from Customer Proprietary Network Information Notification Requirements*, Order, 12 FCC Rcd 21756 (Com. Car. Bur., Pol. and Prog. Plan. Div. 1997) (granting AT&T, the BOCs, and GTE a waiver of the CPNI notification requirements pending issuance of a Commission Report and Order in related rulemaking).
- ◆ *Craig Wireless of Honolulu Inc.; Operator of Wireless Cable System in: Oahu, Hawaii; Request for Waiver of Section 11.11(a) of the Commission's Rules*, Order, 18 FCC Rcd 20099 (Enf. Bur., Spectrum Enf. Div. 2003) (granting a temporary waiver of rules requiring transmission of EAS messages on wireless cable systems until the effective date of any changes adopted by the Commission to EAS rules or 90 days after the Commission issues a decision declining to adopt any changes).
- ◆ *National Exchange Carrier Association, Inc.; Petition for Interim Waiver of Section 69.602 of the Commission's Rules*, Order, 17 FCC Rcd 12888 (Wir. Comp. Bur. 2002) (granting an interim waiver of the rules that require NECA's directors to stand election annually while the Commission examines the election requirements in a pending rulemaking).
- ◆ *Maritel, Inc.; Request for Waiver of Part 80 Regulations to Permit Use of 12.5 kHz Radio Equipment Operating in the 156-162 MHz Frequency Band*, Order, 16 FCC Rcd 9294 (Wir. Tel. Bur., Pub. Saf. and Priv. Wir. Div. 2001) (granting limited waiver to the extent

## Commission Precedent for Granting a Waiver Pending a Relevant Rulemaking, continued

necessary to allow certain permit manufacturers and equipment vendors to employ and secure certification for equipment designed for narrowband operations pending outcome of a related rulemaking).

- ◆ *GARMIN International, Inc.; Request for Waiver of Family Radio Service Rule Sections 95.193(a) and 95.631(d) to Authorize Manufacture, Sale and Use of GPS Transmission Enhanced FRS Units*, Order on Reconsideration, 16 FCC Rcd 7753 (Wir. Tel. Bur., Pub. Saf. and Priv. Wir. Div. 2001) (granting extension of a waiver from one years to two years to allow GARMIN to manufacture and market handheld FRS transceivers capable of transmitting GPS location and information on FRS channels pending the Commission's decision on a petition for rulemaking seeking to codify the terms of the waiver).
- ◆ *LoJack Corporation; Request for Waiver of Section 90.20(e)(6) of the Commission's Rules*, Order, 15 FCC Rcd 18939 (Wir. Tel. Bur., Pub. Saf. and Priv. Wir. Div. 2000) (granting a waiver to permit LoJack to use a duty cycle not permitted under the rules pending the outcome of a contemporaneously filed petition for rulemaking seeking to change the duty cycle limit).
- ◆ *Pioneer Telephone Association, Inc., (Market B163); TLA Spectrum, L.L.C., (Market B391); Midwest Wireless Communications, L.L.C., (Market B378); Chariton Valley Communication Corporation, Inc. (Markets B090 and B230); OPCS Three, L.L.C., (Markets B112 and B145); Requests for Waiver of Section 20.6 of the Commission's Rules*, Order, 15 FCC Rcd 9918 (Wir. Tel. Bur., Com. Wir. Div. 1999) (granting waivers to exceed the 45 MHz spectrum cap set forth in the rules pending related rulemaking).
- ◆ *Dobson Communications Corporation and AT&T Wireless Services, Inc.; Request for Waiver of Section 22.942 of the Commission's Rules*, Order, 14 FCC Rcd 18405 (Wir. Tel. Bur., Com. Wir. Div. 1999) (granting waiver to allow AT&T Wireless to make a less than 5 percent passive equity investment in Dobson pending rulemaking on the issue).
- ◆ *Nextwave Personal Communications Inc. Request for Temporary Waiver of Indirect Alien Ownership Limits*, Order, 12 FCC Rcd 6543 (Wir. Tel. Bur. 1997) (granting extension of time to comply with alien ownership limits until 6 months following the conclusion of rulemaking implementing World Trade Organization Agreement).
- ◆ *Request of Western PCS III License Corporation PCS Station KNLF244 Denver, Colorado MTA (Market No. 22B) For Expedited Limited Waiver of Sections 24.204 and 20.6 of the Commission's Rules*, Order, 11 FCC Rcd 14487 (Wir. Tel. Bur., Com. Wir. Div. 1996) (granting extension of time to comply with PCS spectrum cap pending resolution of Commission rulemaking to revise the cap upward.).